



STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota by the
Minnesota Pollution Control
Agency

COURT FILE NO. 670767

Plaintiff,

AMENDED COMPLAINT

vs.

Reilly Tar & Chemical Corporation,

Defendant.

The State of Minnesota, by the Minnesota Pollution Control Agency, for its amended complaint herein states and alleges as follows:

PARTIES

1. The State of Minnesota is a sovereign State of the United States of America acting for itself, and in its quasi sovereign capacity, and as parens patriae for its citizens and inhabitants. The Minnesota Pollution Control Agency (hereinafter "Agency") is a statutory agency of the State of Minnesota. It is responsible for administering and enforcing laws and regulations relating to air, land, and water pollution, which laws and regulations have general application throughout the State of Minnesota (Minn. Stat. §§115.01 et seq. and 116.01 et seq. (1976 and Supp. 1977)). Warren Spannaus is the Attorney General of the State of Minnesota and is generally charged with enforcement of all laws of this State (Minn. Stat. §8.01 et seq. (1976 and Supp. 1977)). He is specifically charged with enforcement of the statutes and regulations relating to air, land, and water pollution (Minn. Stat. §§115.071 subds. 3 and 4 (1976)). The Agency and the Attorney General are authorized to bring actions under the Minnesota Environmental Rights Act (Minn. Stat. §116B.03 (1976)).

2. Defendant Reilly Tar & Chemical Corporation (hereinafter "Defendant") is an Indiana corporation. The liabilities and

obligations of Defendant alleged herein were incurred within this State and arose out of business done in this State by the Defendant at a time when Defendant was the holder of a certificate of authority to transact business in the State of Minnesota.

FACTUAL ALLEGATIONS

3. For approximately sixty-five years, Defendant or its predecessor in interest (Republic Creosoting Company) engaged in the business of distilling coal tar into creosote oil and impregnating wood products with such creosote oil or solutions at its approximately eighty-acre site in St. Louis Park, Minnesota (hereinafter "Defendant's site"). Defendant discontinued its operations in St. Louis Park, Minnesota, on or about July 21, 1972.

4. During the course of its activities, Defendant discharged and allowed the escape of liquid coal tar and creosote wastes to the ground surface over a wide portion of Defendant's site. These thick, black, noxious-smelling wastes penetrated deep into the soil on Defendant's site and south of Defendant's site, where said wastes had been carried in surface runoff from the site. Coal tar and creosote wastes discharged by the Defendant have penetrated more than fifty feet deep into the soil and have penetrated into soil at least 1,000 feet from Defendant's site.

5. The coal tar and creosote wastes discharged by the Defendant directly to the ground surface contained phenols, water soluble substances which give off a noxious smell and impart a foul taste to water, even when present in only small quantities. Said coal tar and creosote wastes also contained polynuclear aromatic hydrocarbon (PAH) substances, including, inter alia, benzo(a)pyrene (also known as benzpyrene), benzo(a)anthracene, dibenze(a,h)anthracene benzo(b)fluoranthene, benzo(i)fluoranthene and chrysene, each of which is either a known or suspected human carcinogen.

6. The phenols and carcinogenic PAH substances contained in Defendant's coal tar and creosote wastes have entered the groundwater beneath Defendant's site and have traveled significant distances from the site. Said substances have fouled shallow wells in the vicinity of Defendant's site and rendered water extracted therefrom unfit for human consumption.

7. An "aquifer" is an underground layer of rock, sand, or other material containing water, into which wells can be sunk. There are, beneath Defendant's site and the vicinity of Defendant's site, a series of progressively deeper aquifers which, on information and belief, are used by up to one-quarter million persons in the metropolitan area as a source of drinking water. Until the phenols and carcinogenic PAH substances resulting from Defendant's activities are captured and removed from the soil and groundwater at and in the vicinity of Defendant's site, these harmful substances present an imminent threat of damage to the water quality of one or more aquifers because of the substantial likelihood that said substances will migrate. Said harmful substances may have already begun to enter and contaminate one or more aquifers.

8. The Plaintiff has expended more than \$110,000.00 in an effort to quantify the pollution damage to groundwater and soil and in an effort to ascertain appropriate remedial measures for recapture of the pollutants. The final remedial measures for recapture of the pollutants are still being studied at the further expense of the Plaintiff of not less than \$200,000.00 and have yet to be determined. Such abatement measures will most likely involve barrier wells which may require pumping and treatment of barrier well effluent for as long as 50 or 100 years, all at a cost of millions of dollars. In addition, the final remedial measures, should such barrier wells alone prove to be inadequate, may eventually involve excavation of contaminated soil at a cost of many millions of dollars.

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9. Should the harmful substances present in the soil and groundwater beneath the vicinity of Defendant's site migrate to deeper aquifers which are presently used by the Plaintiff's citizens and inhabitants as drinking water supplies, such aquifers may either have to be abandoned or the water therefrom may have to be treated by expensive filtration methods prior to human consumption.

10. The Defendant's actions herein complained of have resulted in a continuing health hazard. The Defendant has neglected to take any steps to abate that hazard. The damage to Plaintiff's citizens and inhabitants will continue for each and every day that the pollution in the vicinity of Defendant's site is not abated.

11. Each of the statutory and regulatory violations alleged hereinafter was willful.

DISPOSAL SYSTEM PERMIT

COUNT I

12. Plaintiff realleges the allegations contained in paragraphs 1 through 11 of this complaint.

13. Minn. Stat. §115.07 subd. 1 (1976) provides:

It shall be unlawful for any person to construct, install or operate a disposal system, or any part thereof, until plans therefor shall have been submitted to the [A]gency unless the [A]gency shall have waived the submission thereof to it and a written permit therefor shall have been granted by the [A]gency.

14. Minn. Stat. §115.01 subd. 8 (1976) defines "disposal system" as:

[A] system for disposing of sewage, industrial waste, and other wastes . . . includ[ing] sewer systems and treatment works.

15. Prior to the cessation of its operations in St. Louis Park as hereinbefore alleged, Defendant operated a disposal system without obtaining a state disposal system permit, in violation of Minn. Stat. §115.07 subd. 1 (1976). As a result of said statutory violation, the Plaintiff is entitled to the relief hereinafter

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described in paragraphs 16 through 19 of this complaint.

16. Minn. Stat. §115.071 subd. 3 (1976) provides in part:

Any person who violates any provision of chapters 115 or 116 . . . or of . . . any rules, regulations, stipulation agreements, variances, schedules of compliance, or orders issued by the [A]gency, shall forfeit and pay to the state a penalty, in an amount to be determined by the court, of not more than \$10,000 per day of violation.

In addition, in the discretion of the court, the defendant may be required to:

(a) forfeit and pay to the state a sum which will adequately compensate the state for the reasonable value of cleanup and other expenses directly resulting from unauthorized discharge of pollutants, whether or not accidental;

(b) forfeit and pay to the state an additional sum to constitute just compensation for any loss or destruction to wildlife, fish or other aquatic life and for other actual damage to the state caused by an unauthorized discharge of pollutants.

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The civil penalties and damages provided for in this subdivision may be recovered by a civil action brought by the attorney general in the name of the state.

17. Minn. Stat. §115.01 subd. 13 (1976) defines "pollutant" to mean:

[A]ny "sewage," "industrial waste," or "other wastes," as defined in [Chapter 115], discharged into a disposal system or to waters of the state.

Minn. Stat. §115.01 subd. 3 (1976) defines "industrial waste" to mean:

[A]ny liquid, gaseous or solid waste substance resulting from any process of industry, manufacturing trade or business or from the development of any natural resource.

The coal tar and creosote wastes discharged by the Defendant as hereinbefore alleged were and are "pollutants" within the meaning of Minn. Stat. §115.01 subd. 13 (1976).

18. The discharge of coal tar and creosote wastes to the ground surface as hereinbefore and hereinafter alleged violated provisions of Chapter 115 and thus constituted an unauthorized

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discharge of pollutants within the meaning of Minn. Stat. §115.071 subd. 3 (1976). The Plaintiff is entitled to the recovery of civil penalties and damages in amounts to be determined in this action.

19. Minn. Stat. §115.072 (1976) provides in part:

In any action brought by the attorney general, in the name of the state, pursuant to the provisions of chapters 115 and 116, for civil penalties, injunctive relief, or in an action to compel compliance, if the state shall finally prevail, and if the proven violation was willful, the state, in addition to other penalties provided in this chapter [115], may be allowed an amount determined by the court to be the reasonable value of all or a part of the litigation expenses incurred by the state

DUTY TO AVOID AND ABATE WATER POLLUTION

COUNT II

20. Plaintiff realleges the allegations contained in paragraphs 1 through 11 and 16 through 19 of this complaint.

21. Minn. Stat. §115.061 (1976) provides:

It is the duty of every person to notify the Agency immediately of the discharge, accidental or otherwise, of any substance or material under its control, which if not recovered, may cause pollution of the waters of the State, and the responsible person shall recover as rapidly and as thoroughly as possible such substance or material and take immediately such other action as may be reasonably possible to minimize or abate pollution of waters of the state caused thereby.

22. Minn. Stat. §115.01 subd. 10 (1976) defines "person" to include any corporation, such as Defendant Reilly Tar & Chemical Corporation.

23. Minn. Stat. §115.01 subd. 9 (1976) defines "waters of the state" to include underground bodies or accumulations of water and aquifers.

24. Minn. Stat. §115.01 subd. 5 (1976) defines "pollution of water" to mean:

(a) [T]he discharge of any pollutant into any waters of the state or the contamination of any waters of the state so as to create a nuisance or render such waters unclean, or noxious, or impure so as to be actually or potentially harmful or detrimental or injurious to

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public health, safety or welfare, to domestic, agricultural, commercial, industrial, recreational, or other legitimate uses, or to livestock, animals, birds, fish or other aquatic life; or (b) the man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of waters of the state.

25. The failure of Defendant to notify the Agency immediately of its discharges of coal tar and creosote wastes to the ground surface and the failure of the Defendant to take whatever immediate action was and is reasonably possible to recover the discharged coal tar and creosote wastes and to minimize or abate pollution of underground waters of the State was and is in violation of Minn. Stat. §115.061 (1976). As a result of said statutory violation, the Plaintiff is entitled to the relief hereinbefore described in paragraphs 16 through 19 of this complaint.

DUTY TO COMPLY WITH STATE WATER
POLLUTION CONTROL ACT

COUNT III

26. Plaintiff realleges the allegations contained in paragraphs 1 through 11, 16 through 19, and 22 through 24 of this complaint.

27. Minn. Stat. §115.45 subd. 1 (1976) provides:

It is the duty of every person affected to comply with the provisions of Laws 1963, Chapter 874, and of Minnesota Statutes, Sections 115.01 to 115.09, comprising the state water pollution control act, as now in force or hereafter amended, and all regulations, orders, and permits adopted or issued by the [A]gency thereunder, and to do and perform all acts and things within his or its power required to effectuate, carry out, and accomplish the purposes of such provisions, regulations, orders, and permits.

28. Defendant's activities as hereinbefore and hereinafter alleged were and are in violation of Minn. Stat. §115.45 subd. 1 (1976). As a result of said violation, the Plaintiff is entitled to the relief hereinbefore described in paragraphs 16 through 19 of this complaint.

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STORAGE OF OIL AND OTHER LIQUID SUBSTANCES
CAPABLE OF POLLUTING WATERS OF THE STATE

COUNT IV

29. Plaintiff realleges the allegations contained in paragraphs 1 through 11, 16 through 19, and 22 through 24 of this complaint.

30. Minn. Reg. WPC 4(b) (1964) provides:

No substance shall be stored, kept, or allowed to remain in or upon any site without reasonable safeguards adequate to prevent the escape or movement of the substance or a solution thereof from the site under any conditions of failure of the storage facility whereby pollution of any waters of the state might result therefrom. It shall be the duty of every owner of such stored substances, or other person responsible therefor, to obtain from the Water Pollution Control Commission a permit for the use of the site for the storage of liquid substances as provided in Section d or Section e.

The permitting authority of the Water Pollution Control Commission was transferred to the Agency in 1967 (Minn. Stat. §116.02 subd. 5 (1976)). Minn. Reg. WPC 4(b) (1964) has the force and effect of law and is fully applicable to and enforceable against the Defendant and others (Minn. Stat. §115.03 subd. 1(e) (1976)).

31. Defendant's activities as hereinbefore alleged were in violation of Minn. Reg. WPC 4(b) (1964). As a result of said violation, the Plaintiff is entitled to the relief hereinbefore described in paragraphs 16 through 19 of this complaint.

DUTY TO PROVIDE CONTROL MEASURES TO AVOID POLLUTION
OF UNDERGROUND WATERS OF THE STATE

COUNT V

32. Plaintiff realleges the allegations contained in paragraphs 1 through 11, 16 through 19, and 22 through 24 of this complaint.

33. Minn. Reg. WPC 22(d)(3) (1973) provides:

Treatment, safeguards or other control measures shall be provided by the person responsible for any sewage, industrial waste, other waste, or other pollutants which are to be or have been discharged to the unsaturated zone or deposited there, or which have been discharged to the zone of saturation, to the extent necessary to ensure that the same will not constitute or continue to be a source of pollution of the underground waters or impair the natural quality thereof.

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This regulation has the force and effect of law and is fully applicable to and enforceable against the Defendant and others (Minn. Stat. §115.03 subd. 1(e)).

34. Defendant is a person responsible for industrial wastes which have been discharged to the unsaturated zone and to the zone of saturation and which continue to be a source of pollution to underground waters of the State. Defendant's activities as hereinbefore alleged were and are in violation of Minn. Reg. WPC 22(d)(3) (1973). As a result of said violation, the Plaintiff is entitled to the relief hereinbefore described in paragraphs 16 through 19 of this complaint.

STATUTORY PUBLIC NUISANCE

COUNT VI

35. Plaintiff realleges the allegations contained in paragraphs 1 through 34 of this complaint.

36. Minn. Stat. §115.071 subd. 4 (1976) provides:

Any violation of the provisions, regulations, standards, orders, stipulation agreements, variances, schedules of compliance, or permits specified in chapters 115 and 116 shall constitute a public nuisance and may be enjoined as provided by law in an action, in the name of the state, brought by the attorney general.

37. The conditions created and caused by the Defendant as hereinbefore alleged constitute a public nuisance pursuant to Minn. Stat. §115.071 subd. 4 (1976), and are subject to abatement.

ENVIRONMENTAL RIGHTS ACT

COUNT VII

38. Plaintiff realleges the allegations contained in paragraphs 1 through 11 of this complaint.

39. Minn. Stat. §§116B.03, and 116B.07 (1976), the Minnesota Environmental Rights Act, authorize the granting of equitable relief to protect the air, water, land, and other natural resources within the State of Minnesota from pollution, impairment or destruction.

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Minn. Stat. §116B.02 subd. 5 (1976) defines "pollution, impairment or destruction" to include conduct which "materially adversely affects or is likely to materially adversely affect the environment."

40. The aforementioned substances in the coal tar and creosote wastes which Defendant has discharged to the soil and to the groundwater impart a noxious taste and odor to water, rendering it unfit for human use, and may cause cancer in human beings. As a result of Defendant's activities complained of herein, said harmful substances have materially adversely affected the environment and are likely to materially adversely affect the environment in an ever wider vicinity in the future.

41. The soil and groundwater pollution hereinbefore alleged is subject to abatement under the Minnesota Environmental Rights Act (Minn. Stat. §116B.07 (1976)).

COMMON LAW PUBLIC NUISANCE

COUNT VIII

42. Plaintiff realleges the allegations contained in paragraphs 1 through 11 of this complaint.

43. The aforesaid actions by Defendant have created a public nuisance which has damaged the Plaintiff and its citizens and inhabitants in a substantial amount not yet ascertained but to be determined in this action. Said public nuisance will continue to damage the Plaintiff and its citizens and inhabitants until such time as the pollution of groundwater caused by Defendant's actions is abated.

44. The Plaintiff has notified Defendant of the groundwater pollution. Defendant has neglected to take any steps to investigate or abate such pollution and will continue to neglect this public nuisance unless ordered otherwise by this Court.

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STRICT LIABILITY FOR ABNORMALLY
DANGEROUS ACTIVITIES

COUNT IX

45. Plaintiff realleges the allegations contained in paragraphs 1 through 11 of this complaint.

46. Because of the presence of carcinogenic PAH substances in Defendant's coal tar and creosote wastes, the operations of the Defendant herein complained of constituted an unduly dangerous activity involving a risk of serious harm to the citizens and inhabitants of the State of Minnesota.

47. The Defendant knew or should have known that the activities herein complained of were unduly dangerous and involved a risk of serious harm to the citizens and inhabitants of the State of Minnesota. The Defendant voluntarily engaged in such unduly dangerous activities for its own pecuniary gain.

48. As a direct and proximate result of the actions of the Defendant, for which it is strictly liable, the Plaintiff and its citizens and inhabitants have suffered substantial damages in an amount not yet ascertained but to be determined in this action.

NEGLIGENCE

COUNT X

49. Plaintiff realleges the allegations contained in paragraphs 1 through 11 of this complaint.

50. The actions of the Defendant complained of herein were in violation of a duty of care owed to the Plaintiff and its citizens and inhabitants, in that said actions were unreasonable, careless, and negligent.

51. As a direct and proximate result of the negligent actions of the Defendant, the Plaintiff and its citizens and inhabitants have suffered substantial damages in an amount not yet ascertained but to be determined in this action.

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RIPARIAN RIGHTS

COUNT XI

52. Plaintiff realleges the allegations contained in paragraphs 1 through 11 of this complaint.

53. The Defendant's use of groundwater for the purpose of disposing of its coal tar and creosote wastes was and is an unreasonable use of such groundwater which has interfered with and impaired and will continue to interfere with and impair the beneficial uses of such groundwater to which the Plaintiff and its citizens and inhabitants have vested riparian rights.

54. As a direct and proximate result of this interference with and impairment of the beneficial uses to which the Plaintiff and its citizens and inhabitants are entitled, the Plaintiff and its citizens and inhabitants have suffered substantial damages in an amount not yet ascertained but to be determined in this action.

WHEREFORE, Plaintiff respectfully prays that this Court issue its judgment and order:

I. Declaring that the Defendant's actions and failures to act, as described in Counts I, II, III, IV, V, VI, and VII of this complaint were in violation of Minn. Stat. §§115.07 subd. 1, 115.061, 115.071 subds, 3 and 4, and 115.45 subd. 1 (1976), and Minn. Reg. WPC(b) (1964) and WPC 22(d)(3) (1973), that said actions and failures to act have materially adversely affected the environment, and that said actions and failures to act have resulted in the creation of a continuing public nuisance.

II. Declaring that the Defendant's actions and failures to act, as described in Counts I, II, III, IV, V, VI, and VII of this complaint, in violation of Minn. Stat. §§115.07 subd. 1, 115.061, 115.071 subds. 3 and 4, and 115.45 subd. 1 (1976), and Minn. Reg. WPC 4(b) (1964) and WPC 22(d)(3) (1973), were willful.

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III. Declaring that the soil and groundwater pollution described in this complaint is a public nuisance for which the Defendant is liable.

IV. Declaring that the Defendant is liable for the damages caused by the soil and groundwater pollution described in this complaint because of Defendant's negligence, because of the doctrine of strict liability, and because Defendant has unreasonably used the groundwater in a manner which has interfered with and impaired the riparian rights of the Plaintiff and its citizens and inhabitants in the affected groundwaters.

V. Assessing against Defendant civil penalties and damages in an amount determined by this Court pursuant to Minn. Stat. §115.071 subd. 3 (1976) for the violations of Minn. Stat. §§115.07 subd. 1, 115.061, 115.071 subds. 3 and 4, and 115.45 subd. 1 (1976) and Minn. Reg. WPC 4(b) (1964) and WPC 22(d)(3) (1973) described in Counts I, II, III, IV, V, VI, and VII of this complaint.

VI. Assessing against Defendant, pursuant to Minn. Stat. §115.071 subd. 3 (1976), the reasonable value of the cleanup and other expenses directly resulting from the unauthorized discharges of pollutants described in Counts I, II, III, IV, V, VI, and VII of this complaint.

VII. Directing the Defendant to abate the public nuisance created in the soil and groundwater in the vicinity of Defendant's site by taking specific steps to remove all said contaminants from the soil and groundwater, to prevent the contaminants from migrating to deeper aquifers, and to dispose of the contaminants in a safe and environmentally acceptable manner.

VIII. Directing that the costs and disbursements of this action, including attorney's fees, be awarded to Plaintiff, pursuant to Minn. Stat. §115.072 (1976).

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IX. Granting such further and different relief as may be just and proper.

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State of Minnesota

RICHARD B. ALLYN
Solicitor General

ELDON G. KAUL
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Attorneys for Plaintiff

Dated: April 11, 1978

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HOLD HARMLESS AGREEMENT

THIS AGREEMENT, entered into this 14th day of June, 1973 by and between the City of St. Louis Park and Reilly Tar and Chemical Corporation.

Whereas, on April 14, 1972 the City of St. Louis Park (hereafter "City") and Reilly Tar and Chemical Corporation (hereafter "Reilly") entered into an Agreement in which the City agreed to acquire Reilly's property in St. Louis Park;

Whereas, the acquisition of this property by the City was intended as a means of settlement of the issues involved in the State of Minnesota, by the Minnesota Pollution Control Agency and the City of St. Louis Park, Plaintiffs vs. Reilly Tar and Chemical Corporation, Defendant, Hennepin County District Court Civil File No. 670767.

Whereas, the City agreed in the Agreement of April 14, 1972 that it would deliver dismissals of the above noted action with prejudice and without cost to defendant executed by itself and by the plaintiff State of Minnesota at closing;

Whereas, the Plaintiff State of Minnesota has refused at this time to deliver a dismissal of its complaint;

Whereas, the City, and Reilly desire to close the real estate sale and purchase in the manner contemplated in the Agreement of April 14, 1972;

Therefore, it is agreed

1. Dismissal of Action by City

The City will dismiss the action, insofar as and remedy is claimed by the City with prejudice and without cost to Reilly.

2. Dismissal of Counterclaim by Reilly

Reilly will dismiss its counterclaim against the City with prejudice and without cost to the City.

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3. City to Hold Reilly Harmless

The City hereby agrees to hold Reilly harmless from any and all claims which may be asserted against it by the State of Minnesota, acting by and through the Minnesota Pollution Control Agency, and will be fully responsible for restoring the property, at its expense, to any condition that may be required by the Minnesota Pollution Control Agency.

4. Hold Harmless Agreement Supplementary

The Hold Harmless Agreement in Number 3 hereof is intended to be supplementary to the Agreement between the City and Reilly relative to Carl Balander & Sons, and to Paragraph 4 of the Agreement of April 14, 1972 between the City and Reilly for the purchase of real estate.

5. City and Reilly to Proceed to Closing

Reilly and the City will proceed to the closing of the real estate transaction contemplated by the Agreement between the parties of April 14, 1972, as amended by the Contract for Deed of October 12, 1972.

Reilly Tar and Chemical Corporation

By

W. J. Ryan
Its *Vice President*

And

Its

City of St. Louis Park

By

James J. Henn

Its Mayor

And

John J. Henn

Its City Manager

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